TRANS ELITE EQUIPMENT RENTAL SDN BHD

v.

PSC-NAVAL DOCKYARD SDN BHD

HIGH COURT MALAYA, KUALA LUMPUR
ABDUL MALIK ISHAK J
[CIVIL SUIT NO: S3-22-60-2002]
30 JUNE 2003

CIVIL PROCEDURE: *Interest - Judgment debt - Whether post-judgment interest on judgment debt to be on total sum of principal sum claimed and pre-judgment interest - Rules of the High Court 1980, O. 42 r. 12*

The plaintiff had applied for summary judgment and prayed for judgment in regard to: (a) the sum of RM494,841.37; (b) interest on the sum of RM494,841.37 at the rate of 8% per annum from 6 December 2001 until the day before the date of judgment ('the pre-judgment interest'); and (c) interest on the total of (a) and (b) above at the rate of 8% per annum from the date of judgment until the date of full realisation ('the post-judgment interest'). The learned senior assistant registrar ('SAR'), on 24 June 2002, granted summary judgment in favour of the plaintiff but merely gave judgment for the post-judgment interest on the principal sum only instead of the total sum of the principal sum and the pre-judgment interest. Thus, the plaintiff appealed against part of the learned SAR's decision in respect of the post-judgment interest.

Held:

[1] The post-judgment interest on the "judgment debt" ought to have been on the total sum of both the principal sum and the pre-judgment interest for the following salient reasons: (i) both the principal sum and the pre-judgment interest (which represented damages for the period in which the plaintiff could not use the principal sum) merged into the judgment debt on 24 June 2002; (ii) this is prescribed by statute, namely O. 42 r. 12 of the Rules of the High Court 1980, and there was no room, at all, for the exercise of discretion by the learned SAR to award post-judgment interest on only the principal sum and not the judgment debt; and (iii) the awarding of post-judgment interest on both the principal sum and the pre-judgment interest was practised in Malaysia as well as in Singapore. (pp 279 f-h & 280 a)

[Appeal allowed.]

Case(s) referred to:
Chia Ah Sng v. Hong Leong Finance Ltd [2001] 1 SLR 591
NM Rothschild & Sons (Singapore) Ltd & Ors v. Rumah Nanas Rubber Estate Sdn Bhd [1994] 2 SLR 160
Sarwari Ainuddin v. Abdul Aziz Ainuddin [1999] 8 CLJ 534 HC

Legislation referred to:
Civil Law Act 1956, s. 11
Rules of the High Court 1980, O. 42 r. 12

Rules of Court 1996 [Sing], O. 42 r. 12

For the plaintiff - Pang Kong Leng; M/s Cheah Teh & Su
For the defendant - Abdul Razak Abu Bakar; M/s Thanggaiya Zawawi & Co

Reported by Suresh Nathan

JUDGMENT

Abdul Malik Ishak J:

Introduction

This was an appeal filed by the plaintiff as seen in encl. 7 against part of the decision of the learned senior assistant registrar ("SAR") that was handed down on 24 June 2002 wherein the learned SAR gave summary judgment in favour of the plaintiff. This judgment is focussed on the all pervading issue of how to award interest. It is an issue that will generate awareness all round.

Facts Of The Case

By way of encl. 5, the plaintiff applied for summary judgment and prayed for judgment in regard to:

(a) the sum of RM494,841.37;

(b) interest on the sum of RM494,841.37 at the rate of 8% per annum from 6 December 2001 until the day before the date of judgment (hereinafter referred to as the "pre-judgment interest");

(c) interest on the total of (a) and (b) above at the rate of 8% per annum from the date of judgment until the date of full realisation (hereinafter referred to as the "post-judgment interest");

(d) costs; and

(e) any other consequential relief which this court thinks fair and reasonable.

Bluntly put, what the plaintiff sought for in encl. 5 was for post-judgment interest on the judgment debt which included both the principal sum claimed and the pre-judgment interest.

Now, the application for summary judgment in encl. 5 was heard by the learned SAR on 15 May 2002 and she reserved her decision to 24 June 2002. On that date – referring to 24 June 2002, the learned SAR granted summary judgment in favour of the plaintiff in the following terms:

(i) for the sum of RM494,841.37; and

(ii) interest on the sum of RM494,841.37 at the rate of 8% per annum from 6 December 2001 until the date of full realisation.

In reality, what the learned SAR granted was post-judgment interest that was only given on the principal sum claimed and not on the pre-judgment interest. In other words, the judgment which the learned SAR granted was not as prayed for by the plaintiff in respect of the post-judgment interest. It must be borne in mind that the plaintiff had prayed for post-judgment interest on the total sum of the principal sum and the pre-judgment interest. But the learned SAR merely gave judgment for post-judgment interest on the principal sum only.

It seemed that the learned counsel for the plaintiff in the person of Mr. Pang Kong Leng had submitted before the learned SAR and in the course of that submission he had drawn a distinction between pre-judgment interest and post-judgment interest in the following manner:

(i) that pre-judgment interest ought to be calculated based on the principal sum claimed only; whereas

(ii) the post-judgment interest ought to be calculated based on the total of the principal sum claimed and the pre-judgment interest.

But, unfortunately, it seemed that the learned SAR disagreed with the salient submissions of Mr. Pang Kong Leng and she maintained the unenviable stand that there was no such distinction between pre-judgment interest and post-judgment interest. It was for these reasons that the plaintiff through Mr. Pang Kong Leng filed an appeal as seen in encl. 7 against part of the decision of the learned SAR in respect of the post-judgment interest. Enclosure 7 was worded in this way:

NOTIS RAYUAN KEPADA HAKIM DALAM KAMAR

AMBIL PERHATIAN bahawa Plaintif yang dinamakan di atas bercadang hendak merayu terhadap sebahagian keputusan Penolong Kanan Pendaftar yang diberikan pada 24 haribulan Jun, 2002 yang memerintahkan bahawa penghakiman dimasukkan terhadap Defendan untuk faedah ke atas jumlah RM494,841.37 pada kadar 8% setahun dari tarikh penghakiman sehingga tarikh penyelesaian sepenuhnya.

Bertarikh pada 27 haribulan Jun, 2002

t.t.
...
Peguamcara bagi pihak Plaintif

Dan selanjutnya ambil perhatian bahawa kamu adalah dikehendaki hadir di hadapan Hakim Dalam Kamar pada 4 haribulan September, 2002 pukul 9 pagi di pendengaran permohonan oleh Plaintif yang tersebut, bahawa:

1. rayuan Plaintif dibenarkan;
2. penghakiman bertarikh 24 haribulan Jun, 2002 dipinda sebahagian dengan menggantikan faedah ke atas jumlah RM494,841.37 pada kadar 8% setahun dari tarikh penghakiman sehingga tarikh penyelesaian sepenuhnya dengan faedah ke atas jumlah RM516,533.04 pada kadar 8% setahun dari tarikh penghakiman sehingga tarikh penyelesaian sepenuhnya;
3. kos rayuan dibayar oleh Defendan kepada Plaintif;
4. lain-lain relief dan/atau perintah yang Mahkamah Yang Mulia ini anggap sesuai dan adil.

Bertarikh pada 27 haribulan Jun, 2002.

t.t.
...
Penolong Kanan Pendaftar
Mahkamah Tinggi
Kuala Lumpur.

The Arguments

I shall proceed under different sub-headings. This format would be the best style to adopt.

Pre-judgment Interest

Now, I have this to say.

That interest on the principal sum claimed for the period prior to the judgment date may be awarded pursuant to s. 11 of the Civil Law Act 1956. That section reads as follows:

> 11. Power of Courts to award interest on debts and damages.
>
> In any proceedings tried in any Court for the recovery of any debt or damages, the Court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment:
>
> Provided that nothing in this section:
>
> (a) shall authorise the giving of interest upon interest;
>
> (b) shall apply in relation to any debt upon which interest is payable as of right whether by virtue of any agreement or otherwise; or
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> (c) shall affect the damages recoverable for the dishonour of a bill of exchange.

And the learned SAR had correctly applied the law when she exercised her judicial discretion and awarded interest for the period prior to the judgment date at the rate of 8% per annum on the sum claimed in the region of RM494,841.37. This part of the decision of the learned SAR was not in issue. So far, so good.

Post-judgment Interest

Under this heading, I must refer to O. 42 r. 12 of the Rules of the High Court 1980 ("RHC") which governs "interest on judgment debts" and that order is worded as follows:

12. Every judgment debt shall carry interest at the rate of 8 per centum per annum or at such other rate not exceeding the rate aforesaid as the Court directs (unless the rate has been otherwise agreed upon between the parties), such interest to be calculated from the date of judgment until the judgment is satisfied.

In this context, the learned SAR awarded interest for the period from the date of judgment until the judgment is satisfied at the rate of 8% per annum on the sum claimed of RM494,841.37. It is this part of the decision of the learned SAR that the plaintiff appealed against.

What Is The Meaning To Be Attached To The Words "Judgment Debt"?

It would be clear that under O. 42 r. 12 of the RHC, it is mandatory that every "judgment debt" shall carry interest at the rate of 8% per annum (unless the rate has been otherwise agreed upon between the parties) for the post-judgment period.

Now, the judgment debt could either refer to:

(a) the principal sum claimed of RM494,841.37; or

(b) the total of:

(i) the principal sum claimed of RM494,841.37; and

(ii) the pre-judgment interest (ie, the interest on the sum of RM494,841.37 from 6 December 2001 until 23 June 2002 at the rate of 8% per annum) totalling RM21,691.67.

The grand total would be RM516,533.04 (RM494,841.37 plus RM21,691.67).

The relevant authorities that I will allude to shortly, categorically state that the term "judgment debt" must necessarily include both the principal sum claimed and the pre-judgment interest.

The Malaysian Scenario

In Malaysia, there is only one reported case where post-judgment interest was awarded on the total of the sum claimed and the pre-judgment interest. That would be the case of *Sarwari a/p Ainuddin v. Abdul Aziz a/l Ainuddin* [1999] 8 CLJ 534, a decision of Mahadev Shankar J (as he then was). In that case, the learned judge awarded the plaintiff:

(i) damages for the inheritance which she lost valued at RM547,847.21;

(ii) pre-judgment interest of RM131,483.28; and

(iii) post-judgment interest on the total sum of RM547,847.21 and RM131,483.28.

At p. 537 of the report, the learned judge had this to say:

> The plaintiff is now 67 years old. Her father died intestate in 1944. The defendant took out letters of administration in 1948, and effectively distributed the entire estate between himself and his brothers pursuant to a distribution order he obtained in 1949. The plaintiff was thus deprived of her inheritance. I valued this as at the date of judgment at RM547,847.21. I also ordered that the plaintiff be paid interest thereon from the date of her entitlement up to the date of my judgment. This came to another RM131,483.28. I then added these two sums to make up the decretal amount and ordered that the defendant pay 8% pa thereon until realization. It is this order the defendant now seeks to stay.

The learned judge was bold and forward looking. In rejecting the defendant's counsel's objection that it amounted to awarding compounded interest, the learned judge aptly said (see p. 541 to p. 542 of the report):

> The second objection is more apparent than real. Oliver J had to deal with precisely the same point in *Bushwall Properties Ltd v. Vortex Properties* [1975] 2 All ER 214 at 225 where he said this:
>
> > There is a further point in this connection which counsel for the defendants has raised. The amended statement of claim claimed interest under the Law Reform (Miscellaneous Provisions) Act 1934. Section 3(1) of the 1934 Act confers on the court a discretionary power to award interest on damages. Counsel for the defendants draws attention to the fact that the damages here claimed are calculated by reference to interest paid or lost and relates that fact to the provisions of proviso (a) to s 3(1) where it is provided that 'nothing in this section … (a) shall authorise the giving of interest upon interest …'. Thus, he argues, in this case the court has no statutory discretion. I cannot accept this submission. It appears to me that the proviso was clearly aimed at the sort of case where an interest-bearing debt is sued for (for instance, a mortgage debt or an instalment of interest in arrear). In such a case the court is not

> to award interest on such part of the sum claimed as represents contractual interest. Although what is claimed here is simply a replacement of a sum of money, the quantum of which is calculated by reference to interest which the plaintiffs have had to pay, the sum so claimed is not in any relevant sense interest itself; it is the sum payable by way of damages for breach of contract, and I see no reason why it should not be capable of carrying interest in the ordinary way.
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> In my judgment, therefore, the discretion conferred by the 1934 Act remains exercisable. In as much as the plaintiffs have had to incur payments which have depleted their general funds, or have lost the use of money which would, had it not been paid out for the immediate purchase, have produced an addition to their general funds by way of interest earned, which addition would itself have been available to earn interest, I do not see why in principle interest under the 1934 Act should not be awarded ….

> No part of Sarwari's claim against the defendant represents contractual interest. What she claimed was the 1949 value of the inheritance which she was deprived of in 1994 Ringgit. We could not give her the land back because it had been sold to a third party. So we had to replace it with a sum of money the quantum of which had to include an interest element. Had Sarwari got her inheritance in 1949 she could have earned interest upon that capital, and she must be compensated for that loss. The decretal sum thus arrived at is what the defendant has to pay by way of restitution for what the plaintiff has lost.
>
> Theoretically Sarwari should have been paid the decretal sum on the day of judgment. It is notional capital in her hands and I do not see why interest at 8% should not be awarded to her on this amount until realization.

It is pertinent to note that the learned judge in the course of his judgment did not refer to O. 42 r. 12 of the RHC.

The Singapore Scenario

In Singapore, the case of *NM Rothschild & Sons (Singapore) Ltd & Ors v. Rumah Nanas Rubber Estate Sdn Bhd* [1994] 2 SLR 160 should be referred to. That was a decision of Warren LH Khoo J, and there the learned judge dismissed the plaintiff's second claim against the defendant guarantor after judgment had earlier been given in another suit based on the same guarantee agreement. The learned judge referred to the judgment of the earlier suit which awarded:

(i) the sum of RM2,434,519.38;

(ii) the pre-judgment interest on the sum of RM2,434,519.38; and

(iii) the post-judgment interest on the total sum of (i) and (ii) above.

At p. 162 of the report, the learned judge said:

> On 3 June 1987, the plaintiffs obtained judgment ('the Singapore judgment' or 'the 1987 judgment') in an O. 14 application before the senior assistant registrar of this court in the sum of $2,434,519.38 and default interest at the rate specified from 15 October 1986 to the date of the judgment, and the statutory interest of 8% pa on the sum and default interest from 4 June 1987 to date of payment. The plaintiffs also obtained costs in the fixed sum of $700, the rate for a successful summary judgment application prevailing at that time. The defendants appealed and their appeal was dismissed by LP Thean J on 2 November 1987 and by the Court of Appeal on 16 November 1989.

This would be followed by the case of *Chia Ah Sng v. Hong Leong Finance Limited* [2001] 1 SLR 591, a decision of GP Selvam J. There the learned judge explained the principle of the merger of the original claim into the judgment in these words (see p. 598 of the report):

> *Merger*
>
> 28 In addition to the doctrine of res judicata as outlined above there is another doctrine to be considered. It is the doctrine of merger. According to this, when a judgment is pronounced in favour of a claimant, the original claim merges in the judgment and thereupon the original claim is dead. For example when an action on debt is brought and judgment obtained, the right of action of a contractual debt is fused into the judgment and becomes a judgment debt. The latter being the greater absorbs the lessor (lesser). Thereafter the debt is extinguished is no longer capable of adjudication.
>
> 29 In this case the action for contractual interest, upon judgment by Phang AR, merged into judgment. Thereafter statutory interest at 6% pa ran on the composite judgment amount, that is the principal and contractual interest up to the date of judgment.

Put it differently, what the learned judge said was this. That the principal and the pre-judgment interests both merge into the judgment debt. Statutory interest then runs on the judgment debt comprising of both the principal and the pre-judgment interests.

So it can be surmised that, in Singapore, it is recognised that the pre-judgment interest will merge with the principal sum into the judgment and thereafter interest on the judgment debt means interest on the principal sum plus pre-judgment interest.

Analysis

The two Singapore cases are indeed relevant. It is pertinent to note that O. 42 r. 12 of the Singapore's Rules of Court 1996 is in substance and spirit similar to our O. 42 r. 12 of the RHC. The Singapore's Rules of Court 1996 in particular O. 42 r. 12 thereto states as follows:

> **Interest on judgment debts (O. 42 r. 12)**
>
> 12. Except when it has been otherwise agreed between the parties, every judgment debt shall carry interest at the rate of 6% per annum or at such other rate as the Chief Justice may from time to time direct or at such other rate not exceeding the rate aforesaid as the Court directs, such interest to be calculated from the date of judgment until the judgment is satisfied:
>
> Provided that this rule shall not apply when an order has been made under section 43 (1) or (2) of the Subordinate Courts Act (Chapter 321).

I have earlier reproduced our O. 42 r. 12 of the RHC. The similarities are there for us to discern. But, it is pertinent to point out that under our O. 42 r. 12 of the RHC, the interest rate is at 8% per annum and the rate may be agreed upon between the parties and the Chief Justice too is not mentioned by office as having a role to play.

The sum total of it all would be this. That the post-judgment interest on the "judgment debt" ought to be on the total of both the principal sum claimed and also the pre-judgment interest for the following salient reasons:

(1) that both the principal sum claimed and the pre-judgment interest (which represents damages for the period which the plaintiff could not use the principal sum) merged into the judgment debt on 24 June 2002 – and that would be the date of judgment;

(2) that this is prescribed by statute, namely, O. 42 r. 12 of the RHC and that there is no room, at all, for the exercise of discretion by the learned SAR to award post-judgment interest on only the principal sum and not the judgment debt; and

(3) that the award of post-judgment interest on both the principal sum claimed and also the pre-judgment interest are practised in our country as well as in Singapore.

Conclusion

For the reasons as adumbrated above, I allowed the plaintiff's appeal and gave an order in terms of prayers 1, 2, and 3 of encl. 7. This meant that the summary judgment granted by the learned SAR has to be amended in respect of the post judgment interest.